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Forty-seventh session

SUMMARY RECORD OF THE 1209th MEETING

Held at Headquarters, New York,
on Tuesday, 23 March 1993, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Draft general comment on article 18 of the Covenant (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 18 of the Covenant (continued) (CCPR/C/45/CRP.2)

Paragraph 8

1. Mr. DIMITRIJEVIĆ said that, pursuant to the discussion at the 1207th meeting, additional text had been drafted for paragraph 8. The new text, to be inserted after the first sentence of the existing text, would read:

> "This means that parents and guardians shall be provided with a meaningful and affordable alternative choice if compulsory education includes religious instruction in a particular faith. State education may include religious education, but parents and guardians may require that their children be exempted from such teaching. The State should also ensure that private schools offering religious education also allow exemption from such teaching. States may not prohibit the establishment of private schools for the teaching of religions other than the majority religion of the State concerned, although they may require that general education standards are met in such schools. Required attendance at broadly based religious and moral teachings is not an infringement of a person's freedom of religion or belief. In accordance with article 18 (2) due regard shall be given to the right of a minor not to be subjected to coercion that would impair his or her right to have or adopt a religion or belief."

2. Mr. SADI wondered how the last sentence of the new text would protect children seven years of age and younger from being subject to coercion.

3. Miss CHANET said that the revised text appeared to narrow the scope of paragraph 8 rather than broaden it and did not take into account situations in which the State was completely neutral with respect to religious instruction in schools. After all, one need not have had a religious education in order to have moral and ethical standards. In addition, the statement that "required attendance at broadly based religious and moral teachings is not an infringement of a person's freedom of religion or belief" might conflict with the convictions of those who could not tolerate mandatory religious instruction even when secular education was available. In her view, the original draft's reference to "freedom of thought and conscience and ideas" was more neutral, and therefore preferable.

4. Mrs. EVATT said that the terminology used in the new text should be made compatible with the rest of the draft general comment. To that end, she preferred to use the terms "education" or "teaching" when referring to the religious and moral teachings mentioned in article 18 (1). She particularly wished to know whether the Committee was taking the position that it was permissible for a State to provide compulsory religious education in one particular faith, as the draft text was not clear on that point.

5. Mr. HERNDL said that the second sentence of the new text needed to be made stronger in order to prevent situations in which children would be forced to accept religious instruction in a particular faith. For example, the second part of the sentence might emphasize that exemptions from religious instruction would be mandatory upon the request of parents or guardians. In addition, the phrase "required attendance" in the penultimate sentence of the new text was ambiguous and should be revised to reflect the compulsory nature of public education in general, and not the compulsory nature of attendance in particular classes.

6. Mr. POCAR supported the comments made by previous speakers and wondered whether the difficulties presented by the word "compulsory" in the phrase "compulsory education" could not be resolved by substituting the word "public". He also believed that the third sentence of the revised draft should be deleted altogether, since exemption from religious instruction in private schools was accomplished through the parents' choice not to send their children to such schools. Lastly, the reference in the penultimate sentence to "infringement of the freedom of religion or belief" was superfluous; he would prefer a reference to the "liberty" provided for in article 18 (4) of the Covenant.

7. Mr. WENNERGREN said it was unclear how the new language would be applied to religious schools. After all, it was unreasonable to ask such schools to exempt certain pupils from religious teaching, since that was their principal purpose.

8. Mr. LALLAH suggested that the last sentence might be rephrased to include persons choosing not to hold religious beliefs and that the words "religious and" in the penultimate sentence should be deleted. He disagreed with Mr. Wennergren that exemptions should not be provided in private schools having a religious vocation, because such treatment might conflict with provisions of article 2. He also believed that the phrase "other than the majority religion" should be deleted from the fourth sentence of the revised draft.

9. Mr. MAVROMMATIS was concerned that the revised text sought to encompass too many contingencies; he wondered whether it would not be better to return to broader language. The case of non-believers could be addressed by attaching the phrase "as appropriate" to the end of the first sentence. He also wondered to what extent "choice" was truly possible, given that public schools were regulated by State institutions. He would prefer to have the fifth sentence deleted entirely, or at least amended in accordance with Mr. Lallah's suggestion.

10. Mrs. HIGGINS said that the wording of the first sentence appeared to imply that the State had an obligation to provide a religious education. While her preference would be to delete that sentence entirely, she could support the amendments suggested by Mr. Pocar. She also supported Mr. Pocar's arguments concerning the third sentence, but noted that there were a variety of private schools, and the current draft did not distinguish between schools having a primarily religious mission and those that did not.

11. She also disagreed with Mr. Lallah's suggestion to delete the phrase "other than the majority religion", but suggested that the phrase could be amended to read "including religions other than the majority religion of the State". The

(Mrs. Higgins)

statement contained in the fifth sentence was correct and compatible with case law on the subject and should therefore be retained.

12. She supported the changes to the penultimate sentence suggested by Mr. Herndl and Mr. Pocar. However, any amendments to the last sentence should not obscure the idea that "required attendance at broadly based religious teachings" represented no infringement of the rights of either children or parents.

13. Mr. SADI supported the amendments offered by Mrs. Higgins concerning the need for exemptions from religious instruction, but expressed concern that children so exempted should be provided with effective alternatives, and not merely make-work activities.

14. Mr. NDIAYE said that the draft was generally acceptable, although some clarifications would be required to distinguish between the compulsory nature of school attendance for most children and specific attendance requirements relating to religious courses. He agreed with previous speakers that exemptions were unnecessary in the case of some private schools, because the fact that parents voluntarily paid tuition to such schools indicated that they were already making a choice in sending their children there. He also believed that some parts of the text had been drafted too narrowly; the penultimate sentence in particular was excessively restrictive.

15. Mr. PRADO VALLEJO said that the proposed additional text afforded a good basis for discussion but required a number of clarifications. He agreed with Mr. Pocar that "public" would be more appropriate than "compulsory" in the first sentence. He was concerned that the second sentence said nothing new, but merely reflected an existing situation. He agreed with Mrs. Higgins that there was a need to specify which private schools were meant in the third sentence. With regard to the penultimate sentence, he did not understand what was meant by "broadly based religious and moral teachings" and felt that a more precise definition was needed. The provision concerning the rights of minors was also imprecise and was not very helpful in its present form. On the question of private schools, account needed to be taken of the fact that certain schools were set up in order to teach a specific religion. He also felt that more emphasis should be placed on the fundamental principle of secular education.

16. The CHAIRMAN, speaking in his personal capacity, agreed with Mr. Mavrommatis that the Committee was attempting to deal with too many issues in paragraph 8. There was also a need for consistency with the provisions of article 18 (3), since limiting the freedom of private schools might constitute an infringement of the rights provided for in that paragraph. It might be preferable, therefore, to delete all references to private schools and the rights of minors and to focus attention solely on the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

17. Mr. LALLAH said that he would not object if the problem of introducing religion into education was excluded from paragraph 8. He also agreed with the Chairman that the paragraph should confine its focus to the right of parents to

(Mr. Lallah)

have their children educated in the religion of their choice as set out in article 18 (4).

18. Mr. AGUILAR agreed that "compulsory" should be replaced by "public" in the first sentence of the proposed new text. He endorsed Mr. Prado Vallejo's point concerning secular education, but regretted that the principle was not more widely followed, since in many countries, including his own, the Catholic Church exercised a disproportionate and negative influence over school curricula. Like Mr. Prado Vallejo, he was at a loss to know what was meant by the phrase "broadly based religious and moral teachings". He agreed that paragraph 8 tried to deal with too many issues and that it should concentrate on the liberty of parents provided for in article 18 (4).

19. Mr. DIMITRIJEVIĆ agreed with the Chairman that paragraph 8 should deal only with the liberty of parents. With that in mind, it might be preferable to return to the original text of paragraph 8, with a number of amendments to satisfy the concerns expressed by members of the Committee. In particular, the second part of the second sentence, beginning "and may also ...", could be deleted and a reference to the provisions of article 2 included. The second sentence of the proposed new text could then be inserted, together with the amendment suggested by Mr. Herndl to the effect that children should be exempted from religious education at the request of their parents or guardians. It seemed to be advisable to omit any reference to the question of private schools. Since the notion of a broadly based religious education seemed to pose problems for a number of members, it seemed preferable to retain the third sentence of original paragraph 8. If the Committee could endorse those suggestions, the result would be a text reduced to the bare essentials and focusing on the provisions of article 18 (4).

20. Mrs. HIGGINS noted that there was general agreement that the questions of the coercion of minors and the entitlement to religious schools should be excluded from the paragraph, since they were provided for elsewhere. That left three issues outstanding under article 18 (4), namely the questions of what religious teaching, if any, could be given in the context of public education, what exemptions should be allowed, and what alternatives States should be required to pay for.

21. With regard to Mr. Dimitrijević's proposals concerning the original text of paragraph 8, she was willing to accept the inclusion of the third sentence. However, there seemed to be divergent views as to whether a specific religion could be taught as part of a public education system. She felt that it could, provided that exemptions were available, since to maintain that a specific religion could not be taught would be tantamount to saying that the education system in Catholic countries throughout the world was unlawful under article 18 (4). Consequently, she could not accept the second sentence of original paragraph 8 and proposed the following alternative wording: "A State may in its public education offer religious teaching in a particular religion, provided that a parent or guardian may require that their child be exempted". Finally, there was nothing in article 18 (4) to justify States being required to pay for alternatives to public education, particularly if exemption was provided.

22. Mrs. EVATT said that she fully endorsed Mrs. Higgins's analysis and proposals. However, any exemptions must preserve the right of children to participate fully in the educational system and should not disadvantage them in any way. She was worried that in some cases the State education system was permeated by a particular religion.

23. Mr. DIMITRIJEVIĆ said that, while he understood Mrs. Higgins's concern that the second sentence of original paragraph 8 might be too categorical and exclude a number of countries, her alternative proposal, whereby exemption was dependent upon a request by the parents or guardians, had been considered too weak by some members of the Committee. He suggested that the sentence could be toned down by adding the words "unless children are exempted from such teaching at the request of their parents or guardians at the end". In that way, both sides of the argument could be accommodated.

24. Mr. BRUNI CELLI said that there was a trend in many countries to prefer private education, prompted by a belief that it was of a higher quality than public education. In addition, many States were increasingly handing over responsibility to the private sector for primary, secondary and university education. The problem was that private establishments invariably tended to promote a particular religious, moral, or other viewpoint. While that did not constitute coercion as such, it did pose a threat to the liberty of parents provided for in article 18 (4). The fact that States sometimes provided subsidies to certain private schools and not to others was also a problem that needed to be addressed.

25. Mr. AGUILAR expressed concern that in some countries, children who had been exempted from religious instruction in public schools were subsequently discriminated against and even isolated. Children exempted from religious instruction should not be disadvantaged in any way.

26. Mr. LALLAH suggested that the word "indoctrination" in the second sentence should be replaced by the word "instruction" and that the words "or alternatives" should be inserted after the phrase "unless provision is made for exemption". Public education should not have recourse to public funds for the teaching of one religion alone. Under article 2 and especially article 26, the State had certain obligations to enact laws that guaranteed to all persons equal and effective protection against discrimination on any ground. It was discriminatory for persons practising a State religion to receive State funds for their religious education while others who professed a different faith did not.

27. Mr. PRADO VALLEJO observed by way of example that the countries of the Amazon region often found it difficult to establish State schools in that region because of its vastness; consequently, various missionaries had set up their own schools there. Such schools were called "mixed" schools because they were financed by the State, but administered by religious authorities, and they provided children with compulsory education which included religious instruction. Under article 18 (4), however, States parties were required to respect the liberty of parents to ensure the religious education of their children in conformity with their own convictions. That meant that religion should not be imposed in schools financed by the State.

28. Mr. DIMITRIJEVIĆ said that the first sentence should be retained as it appeared in the original draft. The word "indoctrination" in the second sentence of the original text would be replaced by the word "instruction" and the latter part of the sentence would read "unless provision is made for exemptions and alternatives that would accommodate the wishes of the parents and guardians". The third sentence would be shortened to end with the words "objective way". Lastly, if the Committee deemed it necessary, the final sentence of the original text would be revised to read: "The Committee invites States parties to report on the specific arrangements made in their countries."

29. Mr. AGUILAR said that it was important to emphasize the right to profess no religion. He was therefore in favour of retaining the latter part of the third sentence, which read "and respects the convictions of parents and guardians who do not believe in any religion". He also preferred the term "public education" to "compulsory education" in the second sentence.

30. Mrs. HIGGINS said that if Mr. Dimitrijević's wording, which sought to accommodate Mr. Lallah's point, was accepted, the Committee would be saying that States had a choice: either they did not teach any specific religion at all, or, if they had a State religion and taught it, they should not only allow children to be exempted from such instruction without discrimination but should also pay for instruction in every alternative religion. That implied that all the poor countries of Latin America that included the Catholic religion in their school curricula would also have to pay for instruction in every other religion. However, article 26 did not provide for the right to a State education in the religion of one's choice.

31. Mr. AGUILAR said that if the law provided for religious instruction in one religion, under the provisions of article 26, it should provide for religious instruction in other religions as well, in order not to discriminate.

32. Mrs. EVATT agreed with Mrs. Higgins that the Committee should provide for the exemption and make it clear that the exemption should be non-discriminatory, but go no further.

33. Mr. POCAR suggested that the second sentence should be reworded to read: "The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless such instruction is made optional." That would mean that parents would not have to specifically request exemption; the education would be provided and parents and guardians would be free to have their children receive instruction or not.

34. Mr. SADI said he understood Mr. Lallah's concerns; nevertheless, from a practical point of view, he supported Mrs. Higgins's amendment.

35. Mr. HERNDL supported Mrs. Higgins's proposal but sought clarification as to how the Covenant could create a positive obligation for States to pay for alternative education in specific religions. Since it was true that in some countries compulsory education included religious instruction, it was necessary to create an exemption from such a system without going so far as to create alternatives. Freedom of religion did not imply that States were under the obligation to create religious instruction in alternative religions.

36. Mr. DIMITRIJEVIĆ said that if Mr. Pocar's suggestion to use the word "optional" was adopted, the sentence would not read well and might be open to new interpretation. To accommodate all views, he proposed that the second sentence should be revised to read "unless provision is made for non-discriminatory exemptions or alternatives".

37. Paragraph 8 was provisionally adopted.

Paragraphs 9 and 10

38. Mr. DIMITRIJEVIĆ said that paragraphs 9 and 10 should be considered together and might be consolidated into a single paragraph. Paragraph 9 stated the grounds for permissive limitations. Paragraph 10 was longer and restated the general rules for interpreting restrictions, the nature of restrictions and their proportionality. The idea expressed was that the least restrictive means should be used and that such means should be non-discriminatory. Because limitations of rights were exceptional in nature, States parties were asked to provide information and reasons for such limitations.

39. Mrs. HIGGINS suggested that it might be useful to include in paragraph 9 the issues pertaining to the relationship between articles 18 and 19 of the Covenant. While it was correct to state, in the last sentence of paragraph 9, that prisoners continued to enjoy their rights under article 18, it was important to recall that those rights were subject to limitations under the same article. For example, prisoners did not have the right to attend religious services outside prison. In addition, the reference in the fifth sentence of paragraph 10 to limitations should be accompanied by language reminding States that such limitations should not go beyond what was necessary to protect public order.

40. Mr. SADI said he failed to understand the statement in the third sentence of paragraph 10 that "restrictions on the freedom to manifest religion or belief based on national security are not authorized by article 18 (3)". Situations could be envisaged in which such restrictions might be authorized on the basis of national security. In the fourth sentence, it was difficult to understand why manifestations of beliefs could not be treated as imparting information.

41. Mrs. EVATT said that, in keeping with Mrs. Higgins' suggestion, the reference in the fourth sentence of paragraph 10 to article 19 (3) (b) should be moved to paragraph 9, since that paragraph dealt with the scope of the freedom to manifest one's religion. All manifestations of religion or beliefs were fully protected by article 18 (3), even though such manifestations might also be covered by article 19, which protected freedom of expression.

42. Miss CHANET drew attention to the last sentence of paragraph 9 and pointed out that the United Nations Standard Minimum Rules for the Treatment of Prisoners afforded prisoners the enjoyment of the rights provided for under article 18, including the right to manifest their religion. She therefore believed that the sentence should be retained.

43. She questioned whether an adequate distinction had been made in paragraph 10 between the restrictions imposed by article 18 (3) and those imposed by article 19 (3). It was important not to confuse the two provisions

(Miss Chanet)

because States could, under states of emergency, derogate from the provisions of article 19 (3), but never from those of article 18 (3). Accordingly, she believed that, in its general comment on article 18, the Committee should not refer to limitations on freedom of expression but should confine itself to limitations on freedom of thought, conscience and religion. While the freedom to "behave in accordance with one's conscience", mentioned in the second sentence of paragraph 9, might be covered by article 18 (3), it was not necessarily covered by article 19 (3), since it was possible to behave in accordance with one's conscience without exercising freedom of expression.

44. Mr. WENNERGREN noted that in paragraph 1 of the draft general comment, which the Committee had already adopted, a distinction was made between freedom of thought and freedom of conscience and belief, on the one hand, and freedom of religion, on the other hand. In paragraph 9, however, reference was made to manifestations of religion or belief; it was also stated that "the freedom to express one's thoughts and to behave in accordance with one's conscience is not covered by article 18 (3)". He proposed that, for the sake of consistency, the sentence should be changed to read: "... the freedom to manifest one's thoughts and conscience is not covered by article 18 (3)".

45. Mr. NDIAYE said that it was difficult to see how behaving in accordance with one's conscience could impede the exercise by another person of his rights or endanger public safety, and thus fall under the provisions of article 19 (3) (b).

46. Mr. PRADO VALLEJO said that in the last sentence of paragraph 9, the word "prisoners" should be rendered in Spanish as "detenidos" rather than "prisioneros". He agreed with previous speakers that confusion might result from the combined references in paragraph 10 to article 18 (3) and article 19 (3). In the fourth sentence of paragraph 10, he failed to grasp the meaning of "imparting information", which had been rendered in Spanish as "comunicación de información"; likewise, in the following sentence, the phrase "on which they are predicated" had been poorly translated into Spanish as "que les da pie". In general, he felt that the fifth sentence was meaningless and should be deleted. It was also unclear why the words "a pressing public or social need" had been included in the penultimate sentence of paragraph 10, since they did not appear in article 18 (3), or article 19 (3). It would be preferable to adopt the language used in article 18 (3).

47. Mr. HERNDL suggested that the second sentence of paragraph 9 should be split into two sentences, with a full stop inserted after "article 18 (3)" and the next sentence beginning: "It becomes part ...".

48. The last sentence of paragraph 9 was superfluous, since the general comment on article 10, which the Committee had adopted at its previous session, stated that persons deprived of their liberty enjoyed all the rights specified in the Covenant, subject to those restrictions which were unavoidable in a closed environment.

49. With regard to paragraph 10, the only difference between article 18 (3) and article 19 (3) (b) was that the latter provision mentioned national security.

(Mr. Herndl)

While national security was obviously not a valid ground for restricting manifestations of religion or belief, it was related to public order. Accordingly, the third sentence of paragraph 10, which read "restrictions on the freedom to manifest religion or belief based on national security are not authorized by article 18 (3)", should be retained. The next sentence should be deleted. He also wondered whether the word "ideology" was necessary in the eighth sentence.

50. Mr. POCAR, supported by Mr. AGUILAR, endorsed the proposals to delete the last sentence of paragraph 9 and to combine paragraphs 9 and 10. He also felt that the first sentence of article 9, which referred to the provisions of article 18 (3), was unnecessary, unless it repeated the exact wording used in the Covenant. All comments on article 18 (3) should be placed in paragraph 10, as the first two sentences of that paragraph stated that limitations imposed on manifestations of religion or belief must be established by law.

51. Mr. AGUILAR shared the concerns expressed by Mr. Prado Vallejo with regard to the Spanish translation of paragraph 10.

52. The distinction made between the limitations imposed by article 18 (3) and those imposed in article 19 (3), was a source of concern. Article 18 (3) specifically limited the rights to freedom of thought, conscience and religion established in article 18 (1). Limitations on the freedom of conscience, however, were outside the scope of article 18 (3) and were covered instead by article 19. The freedom to manifest one's conscience was distinct from freedom of expression, as recognized in article 19 (2) which defined that right as "freedom to seek, receive and impart information and ideas of all kinds". Accordingly, he believed that, in its general comment on article 18, the Committee should not deal with limitations on freedom of expression.

53. Mr. MAVROMMATIS said that he had difficulty understanding the eighth sentence of paragraph 10, to which Mr. Herndl had just referred. Religions did not have definitions of morality; they had concepts. Circumstances could be envisaged in which it would be necessary to impose restrictions based on a single religion because that would take local needs into account.

54. Mr. LALLAH said that the French and Spanish versions of paragraph 9 appeared to contain wording that was not in the English version.

55. Mr. WENNERGREN suggested that, rather than deleting the last sentence of paragraph 9, the sentence should be amended to read "... continue, however, accordingly, to enjoy their rights under article 18".

56. Mr. DIMITRIJEVIĆ said that in order to determine whether paragraphs 9 and 10 should be combined the Committee must take a decision on whether to retain the reference in paragraph 10 to article 19 (3). Two interpretations were possible: either that manifestations of conscience could not be restricted, or that such manifestations were not covered by article 18 (3) but could be subject to the limitations specified in article 19 (3). If that reference was eliminated, then the exact wording of article 18 (3) should be inserted at the beginning of the paragraph.

57. Mrs. HIGGINS, supported by Mr. POCAR, said that the reference to article 19 (3) should be retained.

58. Miss CHANET said that the reference should be deleted.

59. Mr. AGUILAR said that he did not object to such a reference but believed that paragraph 10 should deal with that provision and with article 18 (3) separately.

60. Mr. POCAR suggested that the Committee should request Mr. Dimitrijević to consider preparing a new text dealing with article 19.

61. Mr. PRADO VALLEJO requested the Secretariat to consider the possibility of having a new Spanish translation prepared of paragraphs 9 and 10.

62. The CHAIRMAN said that the Secretariat would take Mr. Prado Vallejo's suggestion into account.

The meeting rose at 6.15 p.m.